

under 5 U.S.C. 554 which are required by statute to be determined on the record after opportunity for an agency hearing. These rules do not apply where adjudications on the record are not required by statute even though hearings are conducted using procedures comparable to those set forth in 5 U.S.C. 554.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered matters.

#### **§ 4.604 Applicability to Department of the Interior proceedings.**

The Act applies to any adversary adjudication pending before the Office of Hearings and Appeals of the Department of the Interior at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Departmental action has not been taken before that date, and proceedings pending on September 30, 1984.

#### **§ 4.605 Eligibility of applicants.**

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party prevailing over the Department in the adversary adjudication for which it seeks an award. The applicant must show that it meets all pertinent conditions of eligibility set out in these regulations.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than \$5 million, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not

more than \$5 million and not more than 500 employees. A unit of state or local government is not a public organization within the meaning of this provision.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and the number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls in any manner the election of a majority of that business' board of directors, trustees, or other persons exercising similar functions shall be considered an affiliate of that business for purposes of this part. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in the paragraph constitute special circumstances that would make an award unjust.

(g) An applicant is not eligible if it has participated in the proceeding solely on behalf of other persons or entities that are ineligible.

#### **§ 4.606 Standards for awards.**

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding unless (1) the position of the Department as a party to the proceeding was substantially justified, or (2) special circumstances make the award sought unjust. No presumption arises that the